

112TH CONGRESS  
2D SESSION

# H. R. 3805

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2012

Mr. JORDAN (for himself, Mr. AKIN, Mr. AUSTRIA, Mrs. BACHMANN, Mr. BARTLETT, Mrs. BLACK, Mrs. BLACKBURN, Mr. BOUSTANY, Mr. BRADY of Texas, Mr. BURTON of Indiana, Mr. CALVERT, Mr. CANSECO, Mr. DUNCAN of South Carolina, Mr. DUNCAN of Tennessee, Mr. FLORES, Mr. FORBES, Mr. FRANKS of Arizona, Mr. GARRETT, Mr. HALL, Mr. HERGER, Mr. HUIZENGA of Michigan, Mr. HULTGREN, Mr. JOHNSON of Ohio, Mr. JONES, Mr. KELLY, Mr. KING of Iowa, Mr. KLINE, Mr. LIPINSKI, Mr. LONG, Mr. MANZULLO, Mr. MARCHANT, Mr. MCCOTTER, Mr. MURPHY of Pennsylvania, Mr. NEUGEBAUER, Mr. NUNNELEE, Mr. ROE of Tennessee, Mr. ROGERS of Alabama, Mr. ROSS of Florida, Mrs. SCHMIDT, Mr. SMITH of New Jersey, Mr. SOUTHERLAND, Mr. WESTMORELAND, Mr. HUELSKAMP, Mr. FLEMING, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ultrasound Informed  
3 Consent Act”.

4 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE**  
5 **ACT.**

6 The Public Health Service Act (42 U.S.C. 201 et  
7 seq.) is amended by adding at the end the following:

8 **“TITLE XXXIV—INFORMED**  
9 **CONSENT**

10 **“SEC. 3401. DEFINITIONS.**

11 “In this title:

12 “(1) ABORTION.—The term ‘abortion’ means  
13 the intentional use or prescription of any instru-  
14 ment, medicine, drug, or any other substance or de-  
15 vice or method to terminate the life of an unborn  
16 child, or to terminate the pregnancy of a woman  
17 known to be pregnant with an intention other  
18 than—

19 “(A) to produce a live birth and preserve  
20 the life and health of the child after live birth;  
21 or

22 “(B) to remove an ectopic pregnancy, or to  
23 remove a dead unborn child who died as the re-  
24 sult of a spontaneous abortion, accidental trau-  
25 ma, or a criminal assault on the pregnant fe-  
26 male or her unborn child.

1           “(2) ABORTION PROVIDER.—The term ‘abortion  
2           provider’ means any person legally qualified to per-  
3           form an abortion under applicable Federal and State  
4           laws.

5           “(3) UNBORN CHILD.—The term ‘unborn child’  
6           means a member of the species homo sapiens, at any  
7           stage of development prior to birth.

8           “(4) UNEMANCIPATED MINOR.—The term  
9           ‘unemancipated minor’ means a minor who is sub-  
10          ject to the control, authority, and supervision of his  
11          or her parent or guardian, as determined under  
12          State law.

13          “(5) WOMAN.—The term ‘woman’ means a fe-  
14          male human being whether or not she has reached  
15          the age of majority.

16   **“SEC. 3402. REQUIREMENT OF INFORMED CONSENT.**

17          “(a) REQUIREMENT OF COMPLIANCE BY PRO-  
18          VIDERS.—Any abortion provider in or affecting interstate  
19          or foreign commerce, who knowingly performs any abor-  
20          tion, shall comply with the requirements of this title.

21          “(b) PERFORMANCE AND REVIEW OF  
22          ULTRASOUND.—Prior to a woman giving informed con-  
23          sent to having any part of an abortion performed, the  
24          abortion provider who is to perform the abortion, or an  
25          agent under the supervision of the provider, shall—

1           “(1) perform an obstetric ultrasound on the  
2 pregnant woman;

3           “(2) provide a simultaneous explanation of  
4 what the ultrasound is depicting;

5           “(3) display the ultrasound images so that the  
6 pregnant woman may view them; and

7           “(4) provide a complete medical description of  
8 the ultrasound images, which shall include all of the  
9 following: the dimensions of the embryo or fetus,  
10 cardiac activity if present and visible, and the pres-  
11 ence of external members and internal organs if  
12 present and viewable.

13       “(c) ABILITY TO TURN EYES AWAY.—Nothing in  
14 this section shall be construed to prevent a pregnant  
15 woman from turning her eyes away from the ultrasound  
16 images required to be displayed and described to her. Nei-  
17 ther the abortion provider nor the pregnant woman shall  
18 be subject to any penalty under this title if the pregnant  
19 woman declines to look at the displayed ultrasound im-  
20 ages.

21       **“SEC. 3403. EXCEPTION FOR MEDICAL EMERGENCIES.**

22       “(a) EXCEPTION.—The provisions of section 3402  
23 shall not apply to an abortion provider if the abortion is  
24 necessary to save the life of a mother whose life is endan-  
25 gered by a physical disorder, physical illness, or physical

1 injury, including a life-endangering physical condition  
2 caused by or arising from the pregnancy itself.

3 “(b) CERTIFICATION.—Upon a determination by an  
4 abortion provider under subsection (a) that an abortion  
5 is necessary to save the life of a mother, such provider  
6 shall include in the medical file of the pregnant woman  
7 a truthful and accurate certification of the specific medical  
8 circumstances that support such determination.

9 **“SEC. 3404. PENALTIES FOR FAILURE TO COMPLY.**

10 “(a) CIVIL PENALTIES.—

11 “(1) IN GENERAL.—The Attorney General may  
12 commence a civil action in Federal court under this  
13 section against any abortion provider who knowingly  
14 commits an act constituting a violation of this title  
15 for a penalty in an amount not to exceed—

16 “(A) \$100,000 for each violation in the  
17 first proceeding in the case of the first such vio-  
18 lation; and

19 “(B) \$250,000 per violation in the case of  
20 each subsequent proceeding.

21 “(2) NOTIFICATION.—Upon the assessment of  
22 a civil penalty under paragraph (1), the Attorney  
23 General shall notify the appropriate State medical li-  
24 censing authority.

1       “(b) PRIVATE RIGHT OF ACTION.—A woman upon  
2 whom an abortion has been performed in violation of this  
3 title may commence a civil action against the abortion pro-  
4 vider for any violation of this title for actual and punitive  
5 damages. For purposes of the preceding sentence, actual  
6 damages are objectively verifiable money damages for all  
7 injuries.”.

8   **SEC. 3. PREEMPTION.**

9       Nothing in this Act or the amendments made by this  
10 Act shall be construed to preempt any provision of State  
11 law to the extent that such State law establishes, imple-  
12 ments, or continues in effect disclosure requirements re-  
13 garding abortion or penalties for failure to comply with  
14 such requirements that are more extensive than those pro-  
15 vided under the amendment made by this Act.

16   **SEC. 4. SEVERABILITY.**

17       If any provision of this Act, or any application there-  
18 of, is found to be unconstitutional, the remainder of this  
19 Act and any application thereof shall not be affected by  
20 such finding.

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